

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

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IN RE: DePUY ORTHOPAEDICS, INC. )  
ASR HIP IMPLANT PRODUCTS )  
LIABILITY LITIGATION )

MDL No. 1:10 md 2197

)  
) **SHORT FORM COMPLAINT**  
) **FOR**  
) **DePUY ORTHOPAEDICS, INC.**  
) **ASR HIP IMPLANT PRODUCTS**  
) **LIABILITY LITIGATION**  
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This applies to:

Larry Clabin and Theresa Clabin v.  
DePuy Orthopaedics, Inc. *et al.*

**JURY TRIAL DEMAND**

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Plaintiffs,

-against-

DePUY ORTHOPAEDICS, INC., DePUY  
INC., DEPUY INTERNATIONAL LIMITED,  
JOHNSON & JOHNSON, JOHNSON &  
JOHNSON SERVICES, INC.  
JOHNSON & JOHNSON INTERNATIONAL,

Defendants  
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**ABBREVIATED SHORT FORM COMPLAINT FOR DePUY ORTHOPAEDICS,**  
**INC. ASR HIP IMPLANT PRODUCTS LIABILITY LITIGATION**

1. Plaintiffs, Larry Clabin and Theresa Clabin, state and brings this civil action before the Court for the United States District Court for the Northern District of Ohio as a related action in the matter entitled IN RE: DePUY ORTHOPAEDICS, INC. ASR HIP IMPLANT PRODUCTS LIABILITY LITIGATION, MDL No. 2197. Plaintiffs are filing this short form complaint as permitted by Case Management Order No.4 of this Court.

**ALLEGATIONS AS TO VENUE**

2. Venue of this case is appropriate in the United States District Court for the Southern District of Ohio. Plaintiffs state that but for the Order permitting direct filing into the Northern District of Ohio pursuant to Case Management Order No 4, Plaintiffs would have filed in the United States District Court for the Southern District of Ohio. Therefore, Plaintiffs respectfully request that at the time of transfer of this action back to the trial court for further proceedings that this case be transferred to the above referenced District Court.

3. Plaintiff Larry Clabin is a resident and citizen of Ohio and claims damages as set forth below. Plaintiff's Spouse Theresa Clabin, is a resident and citizen of Ohio, and claims damages as a result of loss of consortium.

4. Plaintiff Larry Clabin was born on November 13, 1972.

5. Plaintiffs claim damages as a result of:

☒ injury to himself/herself

☐ injury to the person represented

☐ wrongful death

☐ survivorship action

☒ economic loss

x       loss of services

      x       loss of consortium

**ALLEGATIONS AS TO INJURIES**

6. Plaintiff Larry Clabin was implanted with a DePuy ASR hip implant on his left hip on or about October 25, 2007 at the Ohio Health Grant Medical Center, in Columbus, Ohio, by Dr. Robert A. Fada.

7. Plaintiff Larry Clabin has suffered the following personal and economic injuries as a result of the implantation with the ASR hip implant: swelling, inflammation, hip pain, and problems sitting and standing.

8. Plaintiff Larry Clabin has not yet scheduled an explantation of the ASR hip implant.

9. Plaintiffs have suffered injuries as a result of implantation of the DePuy ASR hip implant manufactured by defendants as shall be fully set forth in Plaintiffs' Fact Sheet and other responsive documents provided to the defendants and incorporated by reference herein.

10. At the time of implantation with the ASR hip implant, the Plaintiffs resided at 5130 Weddington Drive, Trotwood, Ohio 45426.

11. The defendants by their actions or inactions, proximately caused Plaintiffs' injuries.

12. Plaintiff Larry Clabin could not have known that the injuries he suffered were as a result of a defect in the ASR hip implant until after the date the device was recalled from the market and Plaintiff Larry Clabin came to learn of the recall.

13. As a result of the injuries Plaintiffs sustained, they are entitled to recover compensatory damages for pain and suffering and emotional distress and for economic loss as well as punitive damages.

**ALLEGATIONS AS TO DEFENDANTS**  
**SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY**

14. The following claims and allegations are asserted by Plaintiffs and are herein adopted by reference:

- ☒ FIRST CAUSE OF ACTION  
(NEGLIGENCE);
- ☐ SECOND CAUSE OF ACTION  
(NEGLIGENCE PER SE);
- ☒ THIRD CAUSE OF ACTION  
(STRICT PRODUCTS LIABILITY-DEFECTIVE DESIGN);
- ☒ FOURTH CAUSE OF ACTION  
(STRICT PRODUCTS LIABILITY-MANUFACTURING DEFECT);
- ☒ FIFTH CAUSE OF ACTION  
(STRICT PRODUCTS LIABILITY-FAILURE TO WARN);
- ☒ SIXTH CAUSE OF ACTION  
(BREACH OF EXPRESS WARRANTY);
- ☒ SEVENTH CAUSE OF ACTION  
(BREACH OF WARRANTY AS TO MERCHANTABILITY);
- ☒ EIGHTH CAUSE OF ACTION  
(BREACH OF IMPLIED WARRANTIES);
- ☒ NINTH CAUSE OF ACTION  
(FRAUDULENT MISREPRESENTATION);
- ☐ TENTH CAUSE OF ACTION  
(FRAUDULENT CONCEALMENT);
- ☒ ELEVENTH CAUSE OF ACTION  
(NEGLIGENT MISREPRESENTATION);

- ☒ TWELFTH CAUSE OF ACTION  
(FRAUD AND DECEIT);
- ☒ THIRTEENTH CAUSE OF ACTION  
(UNFAIR AND DECEPTIVE TRADE PRACTICES UNDER STATE LAW);
- ☐ FOURTEENTH CAUSE OF ACTION  
(MISREPRESENTATION BY OMISSION);
- ☒ FIFTEENTH CAUSE OF ACTION  
(CONSTRUCTIVE FRAUD);
- ☐ SIXTEENTH CAUSE OF ACTION  
(NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS);
- ☐ SEVENTEENTH CAUSE OF ACTION  
(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS);
- ☒ EIGHTEENTH CAUSE OF ACTION  
(GROSS NEGLIGENCE/MALICE);
- ☒ NINETEENTH CAUSE OF ACTION  
(LOSS OF CONSORTIUM);
- ☒ TWENTIETH CAUSE OF ACTION  
(PUNITIVE DAMAGES);
- ☒ TWENTY-FIRST CAUSE OF ACTION  
(MEDICAL MONITORING);
- ☒ TWENTY-SECOND CAUSE OF ACTION  
(VIOLATION OF APPLICABLE STATE CONSUMER FRAUD  
STATUTE) – **Ohio Rev. Code § 1345.01 Et. Seq.**
- ☐ TWENTY-THIRD CAUSE OF ACTION  
(RESTITUTION OF ALL PURCHASE COSTS AND DISGORGEMENT OF  
ALL PROFITS FROM MONIES THAT PLAINTIFF INCURRED IN  
PURCHASE OF THE HIP IMPLANT)

PLAINTIFFS ASSERT THE FOLLOWING ADDITIONAL STATE CAUSES OF  
ACTION:

Breach of implied warranty of fitness for a particular purpose

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. For compensatory damages requested and according to proof;
2. For punitive or exemplary damages against Defendants;
3. For all applicable statutory damages of the state whose laws will govern this action;
4. For medical monitoring, whether denominated as damages or in the form of equitable relief;
5. For an award of attorneys' fees and costs;
6. For prejudgment interest and the costs of suit; and
7. For such other and further relief as this Court may deem just and proper;

**JURY DEMAND**

Plaintiffs hereby demand a trial by jury as to all claims in this action.

Respectfully submitted,



JOHN DAVID HART

Texas State Bar #09147700

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**ATTORNEY FOR PLAINTIFFS**

Date: 5/10/11